

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1568 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KUSUMBEN

Versus

PACHANJI TEJMALJI THRO HIS HEIRS

Appearance:

MR MM DALAL for Petitioner
MR Kalpesh Zaveri for respondents

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/02/2000

ORAL JUDGEMENT

#. By my order dated 18.2.2000, the matter is kept for final hearing today. Present revision application was initially notified on board for hearing on 11.2.2000. On that day it was adjourned to 18.2.2000. On 18.2.2000, Mr. Dalal learned advocate for the petitioner was not

present and Mr. Zaveri learned advocate for the respondents was present. On 18.2.2000 Mr. Zaveri pointed out that the interim relief is operating against the respondents since 1984 but since Mr. Dalal was not present, the matter was specifically adjourned for hearing today by my order as mentioned above. Today when the matter was called out Mr. Zaveri is present but Mr. Dalal is not present. In the facts and circumstances, present revision application is taken up for final hearing today and the same is decided on merits.

#. The facts leading to the present revision application are as under:

The respondent herein is the original plaintiff who had filed HRP Suit No.1731 of 1976 in the Court of Small Causes at Ahmedabad. The case of the plaintiff in the said suit was that the plaintiff is the owner of a building known as Pachanji Building at Maninagar, Ahmedabad. One Saraswatiben Maganlal was the original tenant in two blocks and she died on 8.11.1975. It is the case of the plaintiff that on the death of said Saraswatiben, no one has become the tenant of the suit premises. However, present defendant who is the sister of said deceased Saraswatiben has taken possession of the suit premises for the purpose of performing obsequiel ceremonies of said Saraswatiben and subsequently she was not vacating the suit premises and therefore, HRP Suit No.1731 of 1976 was filed for getting a decree for possession. The petitioner herein who is the original defendant in the suit was claiming to be the tenant of the suit premises on the ground that she was residing with said Saraswatiben at the time of her death and that is how the suit has been filed by the plaintiff against the petitioner-defendant Kusumben for getting decree for possession from her. It seems that sister of said Saraswatiben had also expired.

It is further the case of the plaintiff that originally defendant's father had hired the suit premises for running a Balmandir and thereafter in the year 1971 defendant's father had kept only the suit room with him and handed over possession of the rest of the portion of the premises. The father of the defendant died on 4.11.1974 and at that time the defendant's sister Saraswatiben used to stay with him in the suit premises. That defendant's sister Saraswatiben owned a house at Isanpur village and after the death of her father, she told her father that she would shift to Isanpur for sometime. Thereafter said Saraswatiben fell ill and ultimately died on 8.11.75. The present defendant then

came to Ahmedabad for performing obsequial ceremonies of her sister but did not vacate the suit premises. Thereafter the plaintiff served a notice on 2.2.76 requesting the defendant to vacate the suit premises but the defendant failed to comply with the same. Therefore, present suit has been filed for getting possession of the suit premises.

#. The defendant resisted the suit by filing written statement at exh.18 on various grounds. It was stated by the defendant that after the death of her father , she was residing with her sister Saraswatiben in the suit premises jointly and that she is also the legal tenant of the suit premises. Ultimately, it was prayed that the suit may be dismissed.

#. From the pleadings of the parties various issues have been framed by the Trial Court at exh.21 and ultimately while fixing standard rent at Rs. 60/- per month for both the blocks, The Trial Court dismissed the suit its for possession by its judgment and order dated 15.1.80 on the ground that the defendant was a tenant in the suit premises.

#. Aforesaid judgment and order of the Trial Court was challenged by the plaintiff by way of preferring Civil Appeal No.157 of 1980 before the Appellate Bench of Small Causes Court at Ahmedabad. The Appellate Bench had found that the defendant had no right to occupy the suit premises as a tenant. It was also found by the Appellate Bench that neither the defendant nor her brothers were entitled to possession under section 5(11)(c)(1) of the Bombay Rent Act and that the landlord was entitled to get a decree for possession from the defendant as they have no right to occupy the suit premises. Accordingly the Appellate Bench, by its judgment and order dated 31.7.84 decreed the suit of the plaintiff.

#. Said judgment and order passed by the Appellate Bench of the Court of Small Causes, Ahmedabad is impugned in this Revision Application.

#. I have gone through the judgments of both the courts below as well as the oral and documentary evidence on record.

#. It is not in dispute that the plaintiff is the owner of the suit property. It is also not in dispute that present defendant Kusumben is the sister of Saraswatiben and also is the daughter of original tenant Maganlal

Raval. It is the say of the defendant that she was residing at Pune with her husband who was serving there as an Engineer but her four minor children were residing in the suit premises and therefore, the defendant has become tenant of the suit premises along with her children.

#. Original tenant Maganlal died in the suit premises on 4.11.74 and as per the evidence on record, his widowed daughter alone was residing with him in the suit premises. Aforesaid fact has also been admitted by the present defendant in para 4 of her written statement at exh.14. As stated earlier the defendant is residing at Pune with her husband and therefore, she was never residing in the suit premises even at the time of the death of Saraswatiben. On appreciating the evidence on record, it was found by the Appellate Bench that on the death of Maganlal Raval on 4.11.1974 his daughter Saraswatiben alone became tenant under section 5(11)(c)(1) of the Bombay Rent Act. As stated earlier the defendant was not residing in the suit premises at the time of death of said Saraswatiben nor there is any evidence on record to show that said Saraswatiben has bequeathed her tenancy right in favour of the present defendant. Section 5(11)(c)(1) of the Bombay Rent Act reads as under:

" The tenant means any person by whom or on whose account rent is payable for any premises and includes any relation to premises let for residence any member of the tenant's family residing with the tenant at the time of or within three months immediately preceding the death of the tenant as the case may be decided in default of agreement by the court."

##. It has been found by the Appellate Bench that the defendant Kusumben never resided in the suit premises since 1969. She was not even residing in the suit premises at the time of death of Saraswatiben and therefore, she could not have got the benefit of section 5(11)(c)(1) of the Bombay Rent Act. It was argued on behalf of the defendant before the Appellate Bench that by virtue of succession the defendant has succeeded the tenancy right of deceased Saraswatiben. The aforesaid argument was not supported by any provision of law. Section 5(11)(c)(1) gives protection only to those members of the tenant who were residing with the deceased tenant at the time of his/her death. It is not in dispute that even at the time of death of original tenant Maganlal Raval, the defendant was residing at Pune. The

Appellate Bench has, in detail, dealt with the aforesaid aspect in para 16 of its judgment. It was found that even minor children of said Kusumben were not residing with her at the time of her death. It was found by the Appellate Bench in para 17 of its judgment that the evidence on record is not sufficient to hold that minor children of Kusumben were residing in the suit premises. Even in the birth certificates issued by Dr.Lalitaben Shah in respect of these minor children, their residence is not mentioned. On appreciation of evidence the Appellate Bench has found that it is not possible to believe that the children were residing in the suit premises. This is essentially a finding of fact and this court while exercising revisional jurisdiction cannot reappreciate the evidence. On correct interpretation of section 5(11)(c)(1) of the Bombay Rent Act the Appellate Bench has found that the defendant, or her children have no right to occupy the suit premises as tenants and that they will not be entitled to invoke the aforesaid provision of law. Therefore, the view taken by the Appellate Bench cannot be said to be in any way perverse or contrary to law. In the circumstances, I do not find any substance in this Revision Application and therefore, the same deserves to be dismissed. The Revision Application is accordingly dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

(P.B.Majmudar.J)

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